

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

**NEAL HYNEMAN, on behalf of himself
and all others similarly situated,**

**CIVIL ACTION NO.
2:21-cv-02427-TLP-cg**

Plaintiff

Versus

AUTOZONERS, LLC,

Defendant

MOTION TO DISMISS FIRST AMENDED CLASS ACTION COMPLAINT

Defendant AutoZoners, LLC (“AutoZone”), by and through undersigned counsel, pursuant to Federal Rule of Civil Procedure 12(b)(6), respectfully moves this Honorable Court to dismiss Plaintiff’s frequency of wage payment claim pertaining to an alleged violation of New York Labor Law Article 6, § 191.

Dismissal of Plaintiff’s claims is warranted because the First Amended Complaint is essentially a copycat of another putative first amended class action complaint filed six months earlier in the United States District Court for the Eastern District of New York, *Keith Confusione and Randolph Brannigan, on behalf of themselves and all others similarly situated v. AutoZoners, LLC*, Case no.: 2:21-cv-00001-JMA-AYS, involving similar, if not identical, parties and issues; therefore, pursuant to the “first to file” rule, Plaintiff’s First Amended Complaint should be dismissed. In the alternative, Plaintiff’s First Amended Complaint should be dismissed because his § 191 claims fails as a matter of law given that the New York Labor Law does not provide a private right of action for wages that are fully paid albeit not on a weekly basis. Thus, Plaintiff’s claims should be dismissed, with prejudice, at Plaintiff’s cost.

Dated: September 21, 2021

Respectfully submitted,

/s/Christopher M. Myatt
Christopher Myatt, Esq.
BPR No.: 024629
Martin, Tate, Morrow & Marston, P.C.
International Place, Tower II
6410 Poplar Avenue, Suite 1000
Memphis, TN 38119
Telephone: 901-522-9000
Facsimile: 901-527-3746
Email: cmyatt@martintate.com

And

Laurie M. Riley
Florida Bar No.: 657751
(Application for admission *Pro Hac Vice* will be forthcoming)
Jones Walker LLP
201 South Biscayne Boulevard, Suite 2600
Miami, FL 33131
Telephone: 305-679-5728
Facsimile: 305-679-5816
Email: lriley@joneswalker.com

And

Tracy E. Kern, Esq.
Louisiana Bar No.: 20246
(Application for admission *Pro Hac Vice* will be forthcoming)
Jones walker LLP
201 st. Charles Avenue, 47th Floor
New Orleans, LA 70170
Telephone: 504-582-8134
Facsimile: 504-589-8134
Email: tkern@joneswalker.com

Counsel for Defendant

CERTIFICATE OF SERVICE

I certify that on this 21st day of September, 2021, a true and correct copy of the foregoing pleading was filed electronically with the Clerk of Court of the United States District Court for the Western District of Tennessee by using the CM/ECF system.

/s/Christopher M. Myatt
Christopher Myatt, Esq.